U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



PUBLIC AND INDIAN HOUSING

WASHINGTON, DC 20410-5000

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MEMORANDUM FOR:

PUBLIC HOUSING AGENCIES ADMINISTERING THE

HOUSING CHOICE VOUCHER PROGRAM

FROM:

Paula O. Blank General Deputy Assistant Secretary for Public

and Indian Housing, P

SUBJECT:

HUD Notice of Further Revised Implementation of the Housing Choice Voucher Program Administrative Fee

Reduction and Recapture Provisions of the Fiscal Year 2003 Appropriations Act due to Court Decision in National Leased

Housing Association v HUD

Pursuant to PIH Notice 2005-30, HUD announced certain revisions to implementation of the Housing Choice Voucher program administrative fee provisions (105 percent Administrative Fee Reduction and 5 percent Administrative Fee Recapture) of the HUD Fiscal Year 2003 Appropriations Act ("2003 Act"), Public Law No. 108-7, 117 Stat. 11. Public Housing Agencies (PHAs) were sent letters on November 9, 2006, advising them of any changes in their administrative fee payments due under that statute as a result of the revised implementation, as well as advising them of any recapture amounts. Additional payments due to PHAs occurred shortly thereafter, and any appropriate offsets due to HUD were initiated.

On January 16, 2007, the U.S. District Court for the District of Columbia (Court) upheld HUD's authority to implement the reductions and recaptures, but required two modifications in the formula for calculating the 105 percent Reduction provision of the 2003 Act. First, instead of calculating the excess administrative fee reserve based on fee payments during calendar year 2002, the Court directed HUD to recalculate the excess administrative fees based on fee payments made to PHAs during Federal Fiscal Year (FFY) 2002 (October 1, 2001 through September 30, 2002). Second, the Court held that the Reduction provision should be applied only to fee payments that were made to PHAs using funds appropriated by the 2003 Act. Those payments were made between May 1, 2003 and December 31, 2003. HUD had previously applied the Reduction provision to fee payments made between February 20, 2003 and December 31, 2003.

In light of the Court's ruling, HUD must again recalculate application of the 105 percent Reduction provision. These changes affect the implementation of the 5 percent Recapture provision only to the extent that the 105 percent Reduction amount is part of the Recapture calculation. Once the Court ruling was issued, HUD ceased collecting amounts due from PHAs

pursuant to the November 9, 2006, letters, until such time as the further revised calculations could be completed.

In addition to that portion of the Reduction provision addressed by the Court, the 2003 Act provides that the Reduction provision "shall not apply to any public housing agency if the amount of fiscal year 2003 fee payments otherwise authorized to be provided to such agency pursuant to the first proviso in this paragraph does not exceed \$100,000." Consistent with the ruling and statutory language, the Reduction provision, under this further revised implementation, will be applied only to PHAs that, but for the Reduction provision, would have been paid over \$100,000 in administrative fee payments from funds appropriated by the 2003 Act (i.e., those fees paid to PHAs between May 1, 2003 and December 31, 2003). HUD had previously calculated the \$100,000 threshold based on fee payments made to PHAs between February 20, 2003 and December 31, 2003.

The further revised implementation of the admin fee provisions of the 2003 Act will involve:

Recalculate the 105 percent Reduction amount as described as follows:

105 percent Reduction Process:

Will be calculated over the period within which funds made available in the 2003 Act were used, which was for the period May 1, 2003 through December 31, 2003. No reduction if the administrative fee amount calculated in step 3, below, for a PHA for the period 5/1/2003 - 12/31/2003 is equal to or less than \$100,000. No fees can be paid from amounts appropriated in the 2003 Act to PHAs that did not report Administrative Fee reserves as of 01/31/2003.

- Step 1: Calculate fees 8(q) pre-QHWRA for the period 10/1/2001 through 09/30/2002.
- Step 2: Compile administrative fee reserve balances as reported by PHAs as of 01/31/2003.
- Step 3: Calculate fees 8(q) pre-QHWRA for the period 5/1/2003 through 12/31/2003.
- Step 4: If the administrative fee reserve balance as of January 31, 2003, as compiled in step 2 above, exceeds 105 percent of the FFY 2002 fee amount calculated in step 1 above, AND the administrative fee amount calculated in step 3 above, for a PHA for the period 5/1/2003 through 12/31/2003 exceeds \$100,000, then reduce such administrative fee amount calculated in step 3 for the PHA by such excess amount, but only up to and not exceeding the administrative fee amount calculated in step 3 for the PHA.

Recalculate the 5 percent Recapture amount based on the results from above. Compare previous fee payments under PIH Notice 2005-30 with the revised calculations resulting from actions 1 and 2. Determine the amount of (a) any remaining funds due from PHAs to HUD as a result of prior overpayment of admin fees, or (b) additional admin fee payments due from HUD to PHAs.

Inform PHAs of the results.

HUD will collect any remaining administrative fees reductions or recaptures due via offsets, and

will fund any additional administrative fee payments due to PHAs. HUD is targeting completing this implementation by the end of the second quarter of calendar year 2008. No action is required by your agency at this time. HUD will notify all the PHAs affected by the Court decision via electronic communication. We appreciate your cooperation and patience.

Should you have any questions regarding this subject please contact the Financial Management Division at 202-402-2934 or via e-mail at PIH_Financial_Management_Division@hud.gov.